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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,558	11/26/2003	Drue A. Hull	2878.DHUL.PT	9728

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EXAMINER

BERHANU, ETSUB D

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,558

Applicant(s)

HULL, DRUE A.

Examiner

Etsub D. Berhanu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/25/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/25/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because line 10 contains legal phraseology (“disclosed”). Correction is required. See MPEP § 608.01(b).

2. The disclosure is objected to because of the following informalities: line 2 of section [0001] should read “measuring bodily parameters” and line 8 of section [0028] should read “bodily parameter according to other embodiments of the present invention.”

Appropriate correction is required.

3. The use of the trademarks Bluetooth, Memory Stick and SD memory card have been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

4. Claims 5, 9, 11 and 25 are objected to because of the following informalities: both claims 5 and 11 include a trademark (Bluetooth) as part of their limitations; line 5 of claim 9 should refer to “the wireless sensor input”; and claim 25 should be amended to recite “A computer tangible media”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-8, 15, 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 1 recites the limitation "the wireless sensor" in line 3. There is insufficient antecedent basis for this limitation in the claim. Claim 7 is unclear in its limitation of "wherein the display is further configured to display the parameters in the Web page". Claim 15 recites the limitation "the remote computer" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Claims 18 and 19 recite the limitation "the Web page, tables or graphics" on lines 1-2 of claim 18 and line 2 of claim 19. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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10. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stubbs et al.'759 (US Patent No. 6,736,759) further in view of Khanuja et al.'683 (US Pub. No. 2004/0102683).

Regarding claims 1-24, Stubbs et al.'759 discloses a method for wirelessly transmitting pulse oximetry data and a standalone wireless pulse oximeter comprising: a wireless sensor input capable of receiving signals representative of blood oxygen levels and heart rate; a processor in communication with the wireless sensor input for processing raw pulse oximetry data; a wireless sensor configured for measuring raw pulse oximetry data and transmitting the raw pulse oximetry data to the wireless sensor input through the use of an RF transmitter; a wireless transceiver in communication with the processor and configured for communicating oximetry information of raw pulse oximetry data and processed pulse oximetry data; and a display configured for displaying parameters including blood oxygen and heart rate (col. 9, line 40-67 and col. 10, lines 1-13 and 29-33). Figure 5 discloses an oximeter module 40 as means for processing raw pulse oximetry data. Stubbs et al.'759 further discloses a monitoring system capable of being configured to display and store acquired data on a personal computer (col. 3, lines 30-34), and a sensor comprised of red and infrared light sources and a light sensor (col. 14, lines 27-36).

Regarding claim 25, Figure 5 of Stubbs et al.'759 discloses a computer tangible media 67 for storing a computer program, wherein the computer program implements a method comprising: receiving raw pulse oximetry data from probe 41, transmitting raw pulse oximetry data from oximeter module 40 to processor 66 and processing the raw pulse oximetry data to obtain processed pulse oximetry data.

Stubbs et al.'759 discloses all the elements of the current invention, as discussed above, except for the processor in communication with the wireless sensor being further configured to format the processed pulse oximetry data in a Web page, wherein the Web page comprises hypertext markup language (HTML) and is continuously updated in real-time, a wireless access point for receiving information from the wireless transceiver and providing access to the oximetry information on a remote monitoring station in communication with a network, and means for formatting the processed pulse

oximetry data comprising at least one of server-side includes, Javascript, Common Gateway Interface, Active Server Pages, PHP: Hypertext Preprocessor and Extensible Markup Language (XML).

Figure 2 of Khanuja et al.'683 discloses an apparatus for remotely monitoring the condition of a patient comprising: a wireless access point 50 for receiving information from a wireless transceiver and providing access to physiological information on a remote monitoring station 54 in communication with a network, the information being displayed on a Web page 58, wherein the physiological data is stored in XML format (Fig 15, element 202). Khanuja et al.'683 also discloses a software architecture which uses HTML (page 10, section [0171]). Figures 13-16 disclose software for a computer program used to implement a method of serving the Web page onto a network and continuously updating the Web page in real-time (also see page 5, section [0056]). Khanuja et al.'683 further teaches that displaying physiological data on a web portal allows data displayed on charts and tables to be annotated by authorized persons, reports and tables to be exported to spreadsheets and/or e-mailed to others (such as a coach or trainer as mentioned in col. 5, lines 32-36 of Stubbs et al.'759) for review (Figure 16, elements 220 and 222), and parameters, baselines and trends to be set up in order to monitor alerts (page 6, sections [0066] – [0068]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method, oximeter and computer tangible media of Stubbs et al.'759 to include means for formatting processed pulse oximetry data as a Web page and displaying the Web page in real-time, as taught by Khanuja et al.'683, since displaying physiological data on a web portal would allow a coach or trainer to remotely monitor a subject's performance during physical activity.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schulze et al.'396 discloses a wireless internet bio-telemetry monitoring system compatible with a pulse

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oximeter and ECG machine. Chan et al.'403 discloses a wireless monitor capable of being coupled to a patient for remote monitoring of heart and respiratory functions. West et al.'518 discloses a wireless patient monitoring system configured to communicate with a medical telemetry network.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etsub D. Berhanu whose telephone number is 571.272.6563. The examiner can normally be reached on Monday - Friday (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571.272.4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EDB


ERIC F. WINAKUR
PRIMARY EXAMINER